



INTERIOR BOARD OF INDIAN APPEALS

Kiowa Business Committee of the Kiowa Indian Tribe
v. Anadarko Area Director, Bureau of Indian Affairs

18 IBIA 384 (07/23/1990)

Reconsideration denied:
18 IBIA 401



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

KIOWA BUSINESS COMMITTEE OF
THE KIOWA INDIAN TRIBE,
Appellant

v.

ACTING ANADARKO AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
:
: Docket No. IBIA 90-116-A
:
:
: July 23, 1990

On July 16, 1990, the Board of Indian Appeals (Board) received the administrative record in the purported appeal identified above. The record was sent to the Board by the Acting Anadarko Area Director (Area Director), Bureau of Indian Affairs (BIA). Appellant Kiowa Business Committee of the Kiowa Indian Tribe attempted to obtain review of an April 27, 1990, decision issued by the Area Director concerning its request to withdraw \$400,000 of Kiowa tribal judgment funds from BIA trusteeship to be used as collateral for certain economic development projects and for operational costs of those projects.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

By letter dated April 20, 1990, appellant requested the withdrawal of the funds identified above. The Area Director examined the request and determined that it could not be granted. Accordingly, by letter dated April 27, 1990, the Area Director informed appellant of this determination. The letter stated in pertinent part:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and **MUST BE FILED WITHIN 30 DAYS OF THE DATE YOU RECEIVE THIS DECISION.** * * * You must send copies of your notice of appeal to (1) the Assistant Secretary Indian Affairs, * * * (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you sent copies to these parties. * * * If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of [the] Interior at the expiration of the appeal period. NO extension of time may be granted for filing a notice of appeal. [Emphasis in original.]

The administrative record indicates that appellant received the April 27, 1990, letter on May 3, 1990.

By letter dated June 2, 1990, appellant, represented by counsel, filed with the Assistant Secretary - Indian Affairs a document identified as "Notice of Appeal of the Kiowa Business Committee." The document identified the April 27, 1990, letter as the decision being appealed. It showed distribution only to the Area Director and to appellant's Chairman.

By memorandum dated June 6, 1990, the Area Director informed the Assistant Secretary that he had received a copy of the purported notice of appeal. The Area Director stated that the purported appeal should be dismissed for three reasons: (1) the purported appeal was not timely filed; (2) the purported appeal was not properly filed with the Assistant Secretary, who, under duly promulgated Departmental regulations, is not an official with whom an appeal may be initially filed; and (3) there was no record that the counsel representing appellant in the purported appeal had an approved attorney contract with the tribe or had been hired by the attorney having such a contract.

The administrative record filed with the Board included a cover memorandum indicating that the Area Director was "uncertain of the status of this matter and of which office should be provided information on the issues and our decision." The Area Director further stated that, until he was advised otherwise, he would follow the regulations and provide the administrative record to the Board.

The Board need consider only the question of whether the notice of appeal was timely filed. Regulations governing appeals from decisions of BIA Area Directors are set forth in 43 CFR 4.310-4.340. These regulations are cross-referenced in 25 CFR 2.4(e). Appellant was properly informed of the appeal procedures and of the fact that any notice of appeal was to be filed with the Board.

43 CFR 4.332(a) provides in part that

[a] notice of appeal shall be * * * filed with the Board of Indian Appeals * * * within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary - Indian Affairs * * * *. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

43 CFR 4.334 further provides that "[r]equests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended." The Board has consistently held that the timely filing of a notice of appeal with it, as is required by the regulations, is jurisdictional.

See, e.g., Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 370 (1990), and cases cited therein. The Board did not receive appellant's notice of appeal within the time period specified in the regulations. Accordingly, this appeal must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Anadarko Area Director's April 27, 1990, decision is dismissed for lack of jurisdiction. This decision is final for the Department of the Interior.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Franklin D. Arness
Administrative Judge
Alternate Member